THE MARK O. HATFIELD

# COURTHOUSE NEWS

**A Summary of Topical Highlights from decisions of the U.S. District Court for the District of Oregon**

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## Employment

A Caucasian man filed an action against his former employer alleging that he was terminated because of his race. He asserted claims under Title VII, §1981 and ORS 659. Judge Stewart denied a defense motion for summary judgment, finding that plaintiff had produced direct evidence of a potentially discriminatory motive and thus, could maintain an action under either a single or multiple motive theory. The court found that allegations that the President commented that he wanted to hire "more persons of color," did not constitute direct evidence of animus towards Caucasians, but evinced a desire to promote African-Americans. Similarly, the court found that the President's alleged comment that plaintiff was a "fat, white, gay, guy," did not constitute direct evidence of racially discriminatory animus. However, the allegation that the President specifically wanted an African-American to hold plaintiff's positition, did constitute direct evidence of discriminatory animus.

Judge Stewart noted a split of authority on the question of whether a plaintiff must produce direct evidence to sustain a mixed motive case and held that she would follow the majority view and require such evidence. Because the plaintiff had produced direct evidence of discrimination, his claims could proceed under the mixed motive theory.

The court also found sufficient evidence to create a jury question on plaintiff's prima facie case and whether the employer's proffered reasons for termination were pretextual. Plaintiff had worked for this employer for almost 15 years with no indication of any performance difficulties prior to the President's entry into the organization. Further, plaintiff produced evidence that he was terminated for failing to complete a lengthy list of tasks within a week that no reasonable person could have been expected to perform. Foltz v. Urban League of Portland, Inc., CV 99-10-ST (Opinion, Feb. 18, 2000).

Plaintiff's Counsel:

Judy Snyder

Defense Counsel:

Richard VanCleave

**U** Judge Robert E. Jones was recently affirmed by the Ninth Circuit in a ruling that an employer can ask a former employee with a known disability to provide a medical release before re-employment. Harris v. Harris & Hart, CA. No. 98-35949, slip op. 2869 (Opinion, March 13, 2000).

**7** An applicant for a position as a mental health counselor for the Washington County jail filed an action under the Americans with Disabilities Act (ADA) and analogous state statutory law claiming that she was not hired because of a disability. Plaintiff is an alcoholic and drug user who has been clean and sober for 12 years. Defendant admitted that plaintiff was eliminated from the applicant pool solely because of her past drug use, but claimed that its decision was justified by security concerns.

Following the county's decision, plaintiff filed an administrative appeal with the Washington County Civil Service Commission. The Commission upheld the Sheriff's hiring decision and plaintiff did not appeal further.

On cross motions for summary judgment, Judge Ann Aiken held that plaintiff's state statutory claims were precluded due to the administrative proceedings. The court found that plaintiff had a full and fair opportunity to litigate the same issues and that she could have appealed the Commission's decision to an Oregon court. Judge Aiken refused to preclude plaintiff's federal ADA claim, following the reasoning applied by other federal courts to claims under Title VII and the ADEA.

The court also found that plaintiff was covered by the ADA based upon a record of impairment that substantially limited at least one major life activity. The court further found that plaintiff was qualified for the position, noting insufficient evidence to support the defendant's claim that plaintiff posed a security risk. Seatter v. Washington County, CV 98-1585-AA (Opinion, March, 2000 - 26 pages).
Plaintiff's Counsel:
Geoffrey Wren
Defense Counsel:
William Blair

# Jurisdiction

In an action for breach of an insurance contract removed to federal court, Chief Judge Hogan granted plaintiff's motion to remand the action to state court. The action originally filed in state court alleges that defendant breached an insurance contract by discontinuing plaintiff's disability benefits. Defendant removed the action to federal court alleging that the action arose under ERISA. Plaintiff was employed by Benton County and was insured under a group disability insurance policy issued by defendant Standard Insurance Company. Chief Judge Hogan addressed the issue of whether complete preemption existed requiring that plaintiff's complaint be in federal court. The court found that ERISA did not govern this policy because the insurance plan was a "governmental plan," to which ERISA expressly does not apply. The case was remanded to state court. Mayjor v. Standard Ins. Co., Civil No. 99-6288-HO (Opinion, March 6, 2000).

Plaintiff's Counsel:
Michael J. Knapp
Defense Counsel: Lori Metz;
Katherine Somervell

# Procedure

In a bankruptcy proceeding, a creditor obtained a judgment against the debtor and sought the appointment of a receiver to administer the debtor's assets to satisfy the lien. The Debtor subsequently filed a Chapter 7 bankruptcy petition which included an adversary proceeding against the court appointed receivers.

On appeal, Judge Robert E. Jones held that the debtor had to obtain leave of court before he could substitute a "Doe" defendant with a named party. Judge Jones further found that the bankruptcy court did not err in denying the substitution since the amendment would have been futile. The court held that the debtor's complaint failed to state a claim against the named party. Bogart v. California Coastal Commission, CV 99-1773-JO (Opinion, Feb. 2000).

Appellant: Pro Se
Appellee: Daniel Rosenhouse

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